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Attorneys for Nonparty
Matthew McDonald

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Ever.AG, LLC, a Delaware Limited Liability Company,

Misc. Case No. 2:23-mc-00329-WBS-AC
Related Case No. 2:21-cv-02233-WBS-AC

Plaintiff,

VS.

MILK MOOVEMENT, INC., a foreign Corporation, and MILK MOOVEMENT, LLC, a Delaware Limited Liability Company,

**JOINT MOTION FOR ADMINISTRATIVE
RELIEF AND ORDER [PROPOSED]**

Defendants.

MILK MOOVEMENT, INC., a foreign
Corporation,

Counterclaimant.

VS.

Ever.Ag, LLC, a Delaware Limited Liability Company.

Counterdefendant

1 Pursuant to Local Rule 233, Nonparty Matthew McDonald and Defendant and
2 Counterclaim-Plaintiff Milk Moovement, Inc., and Defendant Milk Moovement, LLC
3 (collectively, “Milk”) respectfully bring this Joint Motion for Administrative Relief, seeking an
4 order holding Matthew McDonald’s Motion to Quash Milk’s subpoena (Misc. Case No. 2:23-
5 mc-00329-DB) in abeyance without setting a briefing schedule or hearing date until and unless
6 the Parties notify the Court that a negotiated resolution of the motion cannot be reached by filing
7 a notice of motion and motion under Local Rule 251, with the affidavit required by the Court’s
8 standing order to show cause (ECF No. 419 at 7), seeking either to renew Mr. McDonald’s
9 Motion to Quash or compel Mr. McDonald’s compliance with the subpoena.

10 The Parties are seeking this relief to avoid potentially unnecessary motion practice
11 because they are attempting to negotiate a resolution of the dispute concerning the subpoena
12 Milk served on Mr. McDonald, who is an employee of Banneker Partners, LLC (“Banneker”), an
13 investor in Plaintiff and Counterclaim-Defendant Ever.Ag, LLC (“Ever.Ag”), and closely related
14 disputes concerning subpoenas Milk served on several other employees and former employees of
15 Banneker. This Joint Motion is based on the Recitals set forth herein and the accompanying
16 [Proposed] Order.

17 RECITALS

18 WHEREAS, on June 26, 2023, Milk served a subpoena for documents and testimony on
19 nonparty Matthew McDonald, who is an employee of Banneker, an investor in Ever.Ag;

20 WHEREAS, the subpoena Milk served on Mr. McDonald set a document production date
21 of August 25, 2023 and a deposition date of September 1, 2023;

22 WHEREAS, because the subpoena demanded compliance in Lake Oswego, Oregon,
23 Mr. McDonald was required to file any motion to quash in the U.S. District Court for the
24 District of Oregon (*see Fed. R. Civ. P. 45(d)(3)(A)*);

25 WHEREAS, Mr. McDonald timely moved to quash the subpoena in the U.S. District
26 Court for the District of Oregon under Case No. 3:23-mc-00687-AR on August 14, 2023;
27
28

1 WHEREAS, the U.S. District Court for the District of Oregon transferred Case
2 No. 3:23-mc-00687-AR to this Court on August 25, 2023;

3 WHEREAS, Mr. McDonald's Motion to Quash is now pending in this Court under Case
4 No. 2:23-mc-00329-DB;

5 WHEREAS, Mr. McDonald has filed a Notice of Related Cases in this Court in Case
6 No. 2:23-mc-00329-DB and in Case No. 2:21-cv-02233-WBS-AC;

7 WHEREAS, counsel for Mr. McDonald and counsel for Milk are in the process of
8 attempting to negotiate a resolution of Mr. McDonald's Motion to Quash;

9 WHEREAS, the Parties are also in the process of attempting to negotiate a resolution of
10 disputes concerning other similar subpoenas Milk served on other current Banneker employees,
11 Stephen Davis, Harjot Sachdeva, and Kyle Hufford, and a former Banneker employee, Athena
12 Abate;

13 WHEREAS, while the Parties are negotiating, Milk has agreed to hold the compliance
14 dates for the subpoenas Milk served on Mr. McDonald and all other current and former
15 employees of Banneker in abeyance¹;

16 WHEREAS, the Parties agree that holding the pending Motion to Quash in abeyance
17 would enable the Parties to potentially reach a negotiated resolution of the dispute concerning the
18 subpoena Milk served on Mr. McDonald and other Banneker employees and former employees
19 and avoid potentially unnecessary motion practice; and

20 WHEREAS, the Court has authority to hold the Motion to Quash in abeyance (*see*
21 *Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) (“The
22 trial court possesses the inherent power to control its own docket and calendar.”));

23 _____
24 ¹ Of the other subpoena recipients besides Matthew McDonald, only Athena Abate has filed a
25 motion to quash. Ms. Abate's motion to quash is currently pending in the U.S. District Court for
26 the District of Columbia and was filed before the Parties reached an agreement to attempt to
27 negotiate a resolution of the subpoenas Milk served on Banneker's employees and former
employees. When and if Ms. Abate's Motion to Quash is transferred to this Court, the Parties
anticipate that Ms. Abate will similarly ask for her motion to quash to be held in abeyance
assuming the parties are still attempting to negotiate a resolution of the subpoenas.

1 THEREFORE, the Parties respectfully and jointly move this Court for an order holding
2 the pending Motion to Quash in abeyance until and unless Milk or Mr. McDonald file a notice of
3 motion and motion under Local Rule 251 with the affidavit required by this Court's Standing
4 Order to Show Cause (ECF No. 419 at 7) seeking to renew the Motion to Quash or compel
5 compliance with the subpoena.

6 Dated: September 14, 2023

7 WILLKIE FARR & GALLAGHER LLP
8 Simona Agnolucci
9 Brandon K. Franklin

10 By: /s/ Simona Agnolucci
11 Simona Agnolucci

12 Attorneys for Nonparty Matthew
13 McDonald

14 Dated: September 14, 2023

15 BRAUNHAGEY & BORDEN LLP
16 J. Noah Hagey (SBN: 262331)
17 Garrett M. Biedermann (*pro hac vice*)
18 Douglas S. Curran (*pro hac vice*)

19 By: /s/ Douglas Curran (as authorized on
20 Sept. 13, 2023)
21 Douglas Curran

22 Attorneys for Counterclaim-Plaintiff
23 and Defendant Milk Moovement, Inc.
24 and Defendant Milk Moovement, LLC

ORDER [PROPOSED]

The Court, having considered the Parties' Joint Motion for Administrative Relief, and finding good cause therefore:

IT IS HEREBY ORDERED THAT: The Parties' Joint Motion for Administrative Relief is GRANTED. The Motion to Quash of Matthew McDonald (ECF No. 1) is held in abeyance until and unless Milk or Mr. McDonald file a notice of motion and motion under Local Rule 251 with the affidavit required by this Court's Standing Order to Show Cause (ECF No. 419 at 7) seeking to renew the Motion to Quash or compel compliance with the subpoena.

IT IS SO ORDERED.

DATED: September 14, 2023

Allison Claire
ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE